UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:
Virginia D. Phillips

Social Security No. xxx-xx-1325
Address:656 T Johnson Road, ,Carthage, NC 28327-

Debtor

Case No. 10-81947
Chapter 13

OBJECTION TO CLAIM

NOW COMES the Debtor above-named, through counsel, pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3007, who respectfully objects to the proof of claim filed by the creditor WELLS FARGO BANK, N.A. and dated November 18, 2010, for the following reasons:

1. The Debtors believe the "pre-petition" arrearage claim in the amount of $3,083.12 is overstated. Because the Debtors contest the amount of the pre-petition arrearage claimed by said creditor in its Proof of Claim filed in this case, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Debtors are, by separate document attached herewith, requesting production from said creditor of a payment history and related information.

2. The Debtors further object to the amount of fees included in Wells Fargo Bank, N.A.'s proof of claim. Proof of Claim asserts that Wells Fargo Bank N.A. is entitled to fees totaling $325.00 for the following described expenses:

   a. Bankruptcy post-petition, pre-confirmation legal fees & expenses: $300.00.
   b. NSF: $25.00.

3. Pursuant to N.C. Gen Stat. § 45-91, for a fee to be allowed, Wells Fargo Bank N.A. must assess the fee within 45 days from the date which the fee was incurred, and must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address within 30 days after assessing the fee.

4. Wells Fargo Bank, N.A.'s proof of claim does not specify when the fees were incurred, and does not specify when the fees were assessed.

5. Wells Fargo Bank, N.A.'s proof of claim does not include a copy of the explanatory statement mailed to the borrower at the borrower's last known address.

6. Wells Fargo Bank, N.A.'s failure to provide notice of the fees charged constitutes a waiver of said fees pursuant to N.C. Gen Stat. § 45-91(3). See *In re Saeed*, No. 10-10303 (Bankr.

M.D.N.C., Sept 17, 2010) (2010 WL 3745641). See also *In re Obie*, No. 09-80794, (Bankr. M.D.N.C,.Nov. 24, 2009) (2009 WL 4113587).

WHEREFORE, the Debtors pray that the Court enter an Order disallowing the above referenced fees, and reducing the pre-petition arrearage claim accordingly . Furthermore, in the event that said creditor contests this objection by filing a formal response thereto, the Debtors request that, until such time as the aforementioned payment history is provided, the Court treat any hearing upon this Objection as preliminary, in accordance with the power vested in this Court pursuant to 11 U.S.C. 105(a).

Additionally, the attorney for the Debtors hereby requests an additional attorney fee of $150.00 in the event this objection is sustained

WHEREFORE, the Debtor prays that the Court enter an Order reducing the pre-petition arrearage claim accordingly .

Dated: December 14, 2010

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Koury Hicks
Koury Hicks
N.C. State Bar No. 36204
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750

claimomd.wpt (rev. 9/28/10)

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:
Virginia D. Phillips

Social Security No. xxx-xx-1325
Address:656 T Johnson Road, ,Carthage, NC 28327-

Debtor

Case No. 10-81947
Chapter 13

CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on December 14, 2010. I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

WELLS FARGO BANK, N.A.
Attn: Managing Agent
Mac X2501-01D
One Home Campus
Des Moines, IA 50328-

Sean Corcoran
Attorney for WELLS FARGO BANK, N.A.
5121 Parkway Plaza Drive
Suite 300
Charlotte, NC 28217-

U.S. Bankruptcy Administrator

Richard M. Hutson, II
Chapter 13 Trustee

/s Renee Nolte
Renee Nolte